



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-16

March 08, 2016

Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in  
Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls

---

**HEARING OFFICER RULING NETWORK COMMUNICATIONS INTERNATIONAL  
CORP. PETITION FOR LATE INTERVENTION**

On February 18, 2016, Network Communications International Corp. ("NCIC") filed a Petition for Late Intervention and Request for Inclusion on the Service List ("Petition") with the Department of Telecommunication and Cable ("Department"). On February 24, 2016, Securus Technologies, Inc. ("Securus") filed an opposition to the Petition ("Securus Opposition") and Global Tel\*Link Corporation ("GTL") filed an opposition to the Petition ("GTL Opposition"). On February 26, 2016, Prisoners Legal Services ("PLS") filed an assent to the Petition ("PLS Assent").

A petition to intervene must satisfy the substantive requirements of 220 C.M.R. § 1.03(1). Petitioners must establish that they are "substantively and specifically affected by the proceeding." G. L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(b). In determining whether a petitioner is substantially and specifically affected by a proceeding, the Department has broad discretion to determine whether to permit participation in Department proceedings, and the extent of such participation. *Att'y Gen. v. Dep't of Pub. Utils.*, 390 Mass. 208, 216 (1983); *Boston Edison Co. v. Dep't of Pub. Utils.*, 375 Mass. 1, 45 (1978), *cert. denied*, 439 U.S. 921 (1978); *see also Robinson v. Dep't of Pub. Utils.*, 835 F. 2d 19 (1st Cir. 1987); *Newton v. Dep't of Pub. Utils.*,

399 Mass. 535, 543, n.1 (1959). Such a determination is “based on individual facts establishing the ‘substantial and specific’ affect that the proceeding may have on the individual or entity seeking to intervene.” *Bd. of Health of Sturbridge v. Bd. of Health of Southbridge*, 461 Mass. 548, 558 (2012). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G. L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison Co. v. Dep’t of Pub. Utils.*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Id.* The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. *Id.*

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. *See* 220 C.M.R. § 1.01(4). While good cause may not have a precise definition, administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. *See Investigation by the Dep’t on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 & 17, filed with the Dep’t on Aug. 27, 1999, to become effective on Sept. 27, 1999, by Verizon New England Inc. d/b/a Verizon Mass., D.T.E. 98-57-Phase I, Order on Motion of Verizon for Reconsideration & Clarification; Motion of AT&T for Clarification; Motion of RNK For Clarification; Late-Filed Motion of NAS for Limited Intervention; & Review of Verizon’s Compliance Filings* at 60 (Sept. 7, 2000)(“Verizon MA”).

If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to

conduct a proceeding in a complete, efficient, and orderly fashion. When balancing this need the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *See id.*; *Petition of New England Tel. & Tel. Co. d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Mass. intrastate telecomms. servs.*, D.P.U. 94-50, *Order on Appeal by Mark Brown of Hearing Officer Ruling Denying Late-Filed Petition to Intervene* at 3 (July 22, 1994) ("NYNEX").

NCIC does not provide any specifics as to why its petition to intervene should be granted at this stage in the proceeding. NCIC only identifies that it is an authorized provider of resold interexchange telecommunications and operator services in Massachusetts.<sup>1</sup> NCIC Petition at 1. It also only generally asserts that it has an interest in any proceeding that will determine the rules and regulations of prison telephone communication systems in Massachusetts. *Id.* at 2. PLS adds support to NCIC's arguments, asserting that "[t]he outcome of this proceeding with 'substantially and specifically' affect the decision of NCIC and other providers not currently in Massachusetts as to whether to enter the Massachusetts market in the future." PLS Assent at 1. In contrast, GTL and Securus both assert that by not currently providing inmate calling services at any correctional facility in Massachusetts, NCIC cannot be substantially and specifically affected by the outcome of this proceeding. GTL Opposition at 2; Securus Opposition at 2. While this adjudicatory proceeding will address the intrastate rates applicable to the provision of inmate calling services in Massachusetts, the initial complaint and the scope of the proceeding concerns the rates and service quality of the current providers of intrastate inmate calling services in Massachusetts. *See Hearing Officer Interlocutory Ruling* at 33 (Sept. 23, 2013). The

---

<sup>1</sup> Contrary to the assertions of GTL and Securus (GTL Opposition at 2; Securus Opposition at 2) NCIC has a current tariff on file with the Department and it includes a section for the provision of Inmate Calling Services. *See Network Communications International Corp. a/k/a 1800Call4Less*, M.D.T.C. Tariff No. 2 (filed Dec. 15, 2008)(on file with the Department).

possibility of NCIC providing inmate calling services in the future is too remote and speculative for a finding that NCIC is substantially and specifically affected by an adjudicatory proceeding brought on complaint against specific service providers.<sup>2</sup>

Further, even if the Department found NCIC substantially and specifically affected by the outcome of this proceeding, NCIC does not explain why it is only just now filing to intervene in the proceeding, nor identify how its inclusion in the proceeding would outweigh the interruption to the orderly conduct of this proceeding. At most NCIC claims that its “experience will help provide a transparent explanation of the benefits of fair and reasonable rates and fee to both inmates without impacting the budgets of the jails” without identifying how any of the other parties to this proceeding would fail to provide such a prospective. *Id.* The extent to which NCIC intends to participate in this adjudicatory proceeding is also unclear. NCIC requests full party status, but only indicates an interest in participating in the case status conference.<sup>3</sup> *Id.* at 2-3. NCIC also apparently seeks to broaden the purpose of the case status conference describing it as a general discussion of the effect on the FCC’s Order on inmate telephone rates and fees, whereas the case status conference concerns the effect on the FCC Order on the previously determined scope of this adjudicatory proceeding, as well as, pending discovery matters. *Compare id.* at 1 with *Official Notice and Case Status Conference* at 2 (Jan. 22, 2016). As such, NCIC has not made a convincing showing of good cause for its late intervention and on balance the need to conduct an orderly and efficient proceeding outweighs the proposed extent of NCIC’s participation.

---

<sup>2</sup> If NCIC determined to provide inmate calling services in the future, NCIC would not be hindered by any rates set in this proceeding as NCIC could pursue a waiver to any adopted rates by establishing its actual cost are above any future adopted rate cap.

<sup>3</sup> NCIC was permitted to participate in the case status conference held on February 29, 2016, as its Petition was still pending before the Department.

Therefore, the Department finds the NCIC has not demonstrated a sufficient interest in the proceeding and has not made a showing of good cause to justify its late intervention in the proceeding. Accordingly, the Department DENIES NCIC's Petition in the above-referenced proceeding.

A handwritten signature in blue ink that reads "Michael E. Scott". The signature is written in a cursive, flowing style.

---

Michael Scott  
Hearing Officer

#### NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.